

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE
WRIT PETITION NO. 1742 OF 2006

Ceat Limited

..Petitioner

Vs.

Bhagwan Baburao Babar

..Respondent

Mr. S.K. Talsania, Senior Counsel with Mr. Mahesh Londhe i/by M/s. Sanjay Udeshi and Co. for petitioner.
Mr. P.M. Palshikar for respondent.

CORAM: B.H. MARLAPALLE, J.

Date : August 30, 2006.

P.C.:

1. Heard Mr. Talsania, the learned Senior Counsel with Mr. Londhe i/by M/s. Sanjay Udeshi and Co. for petitioner and Mr. P.M. Palshikar the learned counsel for the respondent-employee.

2. Rule. Respondent waives service. By consent of the parties, the petition is taken up for hearing forthwith.

3. The charge-sheet-cum-suspension order issued against the respondent on 3/9/1999 resulted into a

domestic inquiry against him and the inquiry officer submitted his report on or about 28/7/2000 and a copy of the same was supplied to the employee vide letter dated 4/9/2000 which he received on 13/9/2000. Apprehending termination of service by way of punishment, he approached the Labour Court and filed Complaint (ULP) No.405 of 2000 under Item-I of Schedule IV of the M.R.T.U. and P.U.L.P. Act, 1971. In the said complaint he also moved an application for interim relief under Section 30(2) of the said Act. Both the complaint as well as the application for interim relief were opposed by the employer and after hearing the respective parties, the learned Judge of the Labour Court at Thane by his order dated 15/1/2001 allowed the application at Exh.U-2 and directed that the complainant be retained in service till the final decision in the main complaint. This order came to be challenged in Revision Application (ULP) No.24 of 2001 before the Industrial Court at Thane and the said revision was dismissed by the learned Member on 28/4/2005. Hence, this petition.

4. The learned Judge of the Labour Court in his order below Exh.U-2 stated, (a) that the list of

management witnesses was not supplied to the complainant-workman inspite of his demand during the inquiry proceedings and there was violation of principles of natural justice, (b) though the cross-examination of the complainant was over on 13/4/2000 and he had put it in writing that he did not wish to examine any further witness, his request made in writing on 2/5/2000 to allow some other witnesses to be examined on his behalf could not have been turned down by the inquiry officer and, therefore, the inquiry got vitiated. On these two reasons mainly that the application below Exh.U-2 came to be allowed and the learned Member of the Industrial Court was satisfied that there was no reason to cause interference in the order passed by the Labour Court.

5. It is clear from the inquiry proceedings that all the witnesses examined by the management in support of its case to prove the charges levelled against the complainant were offered to cross-examination and were, in fact, cross-examined by his representative during the domestic inquiry. The alleged failure to furnish the list of company's witnesses to the workman, therefore, did not cause any

prejudice to him to defend his case and when he was examined before the inquiry officer, he did not raise any such claim. The first reason in support of the impugned order passed by the Labour Court is, therefore, unsustainable.

6. On the second point it is not disputed that on 13/4/2000 the complainant's examination was over and he stated that he did not want to examine any more witnesses. This statement was recorded in the proceedings and was duly signed by all the concerned. He was directed to file his written submissions, if any, on or before 24/4/2000. The inquiry was adjourned from time to time for filing the submissions on 28/4/2000, 5/5/2000, 11/5/2000, 12/5/2000, 19/5/2000 and 25/5/2000. The submissions contemplated were from both the sides. However, on 2/5/2000 the complainant made a written application seeking permission to examine a few witnesses in defence. The management's representative opposed this application and consequently it was rejected by the inquiry officer on the ground that no new circumstances were brought to his notice for reopening the inquiry. The inquiry stood concluded on 2/6/2000 and from 2/5/2000

onwards it was adjourned on at least five occasions i.e. 5/5/2000, 11/5/2000, 12/5/2000, 19/5/2000 and 25/5/2000. There was no embargo on the inquiry officer to consider the request made by the complainant on 2/5/2000 and it could have strengthened the contentions of the management that the inquiry was conducted in keeping with the principles of natural justice and maximum opportunities were provided to the delinquent -employee to defend his case. By allowing this application it was also permissible for the inquiry officer to call upon the workman on the very same day and furnish the names of the witnesses proposed and complete their examination during the intervening period. The Labour Court held that this refusal by the inquiry officer vitiated the inquiry and this is a possible view.

7. During the course of arguments, on the suggestion made, the learned counsel for the respective parties conceded that the workman should be given one more chance to examine his defence witness so that any final action in respect of the charge-sheet need not wait till the pending complaint is finally decided and more so the uncertainty

prevailing over for the last about seven years is brought to an end either way.

8. Hence, the petition is partly allowed and the impugned order dated 15/1/2001 passed under Exhibit U-2 and confirmed by the Industrial Court is hereby quashed and set aside. It is directed that the complainant shall furnish the names of his witnesses within one week to the Personal Manager of the respondent-company in writing and the domestic inquiry tribunal shall be reassembled so as to examine these witnesses. If the very same inquiry officer is available he may continue to examine the witnesses. The examination of these witnesses shall be completed as expeditiously as possible and in any case by 31st October, 2006. The inquiry officer shall submit his report within one week on conclusion of recording of evidence of the additional witnesses of the complainant and the management shall supply a copy of the inquiry officer's report to the complainant by 10th November, 2006 by giving him one week's time to submit his explanation/defence, if any. The management shall take a final decision on the inquiry officer's report in any case before 30th November,

2006 and in case the said decision goes against the complainant, he is at liberty to amend the pending complaint before the Labour Court or file a fresh complaint as he may deem appropriate.

9. The parties to maintain status quo till 30/11/2006 or till the final decision on the inquiry officer's fresh report is communicated to the complainant-employee, whichever is earlier.

10. Rule made absolute in terms of the above order but without any order as to costs.

(B.H. Marlapalle,J.)